

PUBLIC NOTICE



**US Army Corps
of Engineers
Kansas City District**

**Permit No. NWK-2014-908
Issue Date: October 24, 2014
Expiration Date: November 23, 2014**

30-Day Notice

**NEOSHO RIVER
WETLAND AND STREAM MITIGATION BANK
LABETTE COUNTY, KANSAS**

This notice is to announce the proposed establishment of the Neosho River Wetland and Stream Mitigation Bank. The Kansas City District, Corps of Engineers, Regulatory Branch requests comments from the public and from local, state, and Federal resource agencies on the establishment of this bank. If approved by the district engineer, in consultation with the Interagency Review Team (IRT), this Bank will be used to replace lost aquatic resources that result from Department of the Army (DA) permits issued for the discharge of dredged or fill material into waters of the United States. If a final mitigation bank instrument is approved, the Corps of Engineers will verify that construction of the Bank is authorized by Nationwide Permit (NWP) No. 27. Please review the bank prospectus and provide comments to: U.S. Army Corps of Engineers, Kansas State Regulatory Office, ATTN: Patrick Trier, 2710 NE Shady Creek Access Road, El Dorado, Kansas 67042.

The prospectus, for this proposed mitigation bank, is available for review at:
<http://www.nwk.usace.army.mil/Media/PublicNotices.aspx>

BANK SPONSOR: Swallow Tail, LLC
24820 Miller Road
Harrisonville, MO 64701

PROJECT LOCATION (As described in the bank prospectus): The subject site is approximately 200 acres adjacent to the Neosho River in Section 22, Township 31 south, Range 21 east, Labette County, Kansas.
[Latitude: 37.33221 --- Longitude: -95.0994] USGS QUADRANGLE-- KS-MCCUNE

AUTHORITY: Section 404 of the Clean Water Act (33 USC 1344).

ACTIVITY (As described in the bank prospectus): Swallow Tail, LLC owns approximately 200 acres of land that it proposes to establish into a compensatory mitigation bank. Land use for the majority of the site is agricultural, with an actively farmed pecan grove in the north and pasture grasses throughout the rest of the property. All adjacent properties are agricultural parcels as well.

The Bank sponsor proposes to legally preserve the property as open space habitat in order to maintain, in perpetuity, the diverse aquatic habitats that are proposed to be constructed at the Bank. The Bank sponsor proposes to grant real estate easement to the Midwest Mitigation Oversight Association to assure compliance with the easement stipulations. The following are the proposed objectives of the mitigation bank: Restore 54.7 acres of riparian buffer; establish 54.35 acres of wetlands; rehabilitate 45.07 acres of wetlands; enhance 1.81 acres of wetlands; establish 32.44 acres of upland buffers; preserve a 1.11 acre pond; stabilize the bank of the Neosho River; and restore a degraded ephemeral and a previously channelized intermittent stream channel. The details are further outlined in the complete bank prospectus. Swallowtail, LLC would be responsible for the development and the implementation of the adaptive management plan, if necessary to achieve performance standards, and the long-term management plan in order to maintain the created habitats.

The proposed Bank geographical service area is the Middle Neosho River sub basin (HUC 11070205) and all contiguous 8-digit HUCs that are within the same 6-digit HUC (11070204, 11070206, and 11070207). This consists of all the Neosho River drainage area within Kansas from the John Redmond Reservoir in Coffey County to its southernmost extent at the Oklahoma border in Cherokee County.

WETLANDS/AQUATIC HABITAT: An approved jurisdiction determination was completed on September 5, 2014, identifying 3,762 feet of perennial stream channel, 716 feet of ephemeral stream channel, and 54.53 acres of wetlands that currently exist on the site.

APPLICANT'S STATEMENT OF AVOIDANCE, MINIMIZATION, AND COMPENSATORY MITIGATION FOR UNAVOIDABLE IMPACTS TO AQUATIC RESOURCES: As part of the establishment and the operation of the Bank, the Sponsor shall avoid and minimize any impacts to jurisdictional waters to the maximum extent possible unless any impact would be determined by the Corps to be necessary or desirable for habitat or aquatic ecosystem function improvement in keeping with the overall purpose of the project which is to provide aquatic ecosystem improvement in the form of compensatory mitigation. Should any impact to jurisdictional waters be determined to be necessary, or desirable, as part of the construction of the proposed aquatic features at the Bank, the Sponsor shall provide a permit application to the Corps for review.

ADDITIONAL INFORMATION: Additional information about this application may be obtained by contacting Mr. Patrick Trier, Regulatory Project Manager, U.S. Army Corps of Engineers, Kansas State Regulatory Office, 2710 NE Shady Creek Access Road, El Dorado, Kansas 67042, telephone: 816-389-3029 (email: Patrick.h.trier@usace.army.mil).

STATE AUTHORIZATION: The applicant may apply for a permit from the Kansas Department of Agriculture pursuant to Kansas Statutes Annotated 82a-301 to 305.

CULTURAL RESOURCES: Kansas City District will comply with the National Historic Preservation Act of 1966 and 36 CFR 800. We have checked the National Register of Historic Places and the Federal Register and one property that is located in the permit area is listed in the Register or proposed for listing. The historic site will not be disturbed by the project plans. This is the extent of our knowledge about historic properties in the permit area at this time. We will evaluate input by the State Historic Preservation Officer, Tribal Historic Preservation Officers (or Tribe designated representative) and the public in response to this public notice, and we may conduct or require a reconnaissance survey of the permit area to check for unknown historic properties, if warranted.

ENDANGERED SPECIES: In compliance with the Endangered Species Act, a preliminary determination has been made that the described work will not affect species designated as threatened or endangered or adversely affect critical habitat. In order to complete our evaluation of this activity, comments are solicited from the U.S. Fish and Wildlife Service and other interested agencies and individuals.

FLOODPLAINS: This activity is being reviewed in accordance with Executive Order 11988, Floodplain Management, which discourages direct or indirect support of floodplain development whenever there is a practicable alternative. By this public notice, comments are requested from individuals and agencies that believe the described work will adversely impact the floodplain.

WATER QUALITY CERTIFICATION: Section 401 of the Clean Water Act (33 USC 1341) requires that all discharges of dredged or fill material must be certified by the appropriate state agency as complying with applicable effluent limitations and water quality standards. The authorization to discharge dredged or fill material into waters of the United States, under the authority of the Clean Water Act, necessary to construct the mitigation bank is likely provided by Nationwide Permit (NWP) No. 27. The Corps of Engineers will continue to review the proposed project in order to verify this authorization. The Kansas Department of Health and Environment has issued water quality certification for NWP No. 27.

PUBLIC INTEREST REVIEW: The decision to issue a permit will be based on an evaluation of the probable impact including the cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, esthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs and, in general, the needs and welfare of the people. The evaluation of the impact of the activity on the public interest will include application of the guidelines promulgated by the Administrator, Environmental Protection Agency under authority of Section 404(b) of the Clean Water Act (33 USC 1344). The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

COMMENTS: This notice is provided in order to outline the details of the described activity so that the Kansas City District may consider all pertinent comments prior to determining if the verification of the NWP authorization is in the public interest. Any interested party is invited to submit to this office written facts or objections relative to the activity on or before the public notice expiration date. Comments both favorable and unfavorable will be accepted and made a part of the record and will receive full consideration in determining whether it would be in the public interest to verify the Department of the Army permit (NWP No. 27). Copies of all

comments, including names and addresses of commenters, may be provided to the applicant. Comments should be mailed to the Corps of Engineers at the address shown under the heading of Additional Information found on page two of this public notice.

PUBLIC HEARING: Any person may request, in writing, prior to the expiration date of this public notice, that a public hearing be held to consider this application. Such requests shall state, with particularity, the reasons for holding a public hearing.